IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3324 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOENKA SYNTEX

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 3324 of 1989

MR RAKESH GUPTA of M/S TRIVEDI & GUPTA for Petitioner No. 1-2

MR ASIM PANDYA for MS DN RAVAL for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 01/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

This petition under Article 226 of the Constitution of India challenges the order dated 15.2.1989 made by respondent No.2 holding that the case of the petitioner is falling within definition 'manufacturer' under Section 2(f) of the Central Excise Act (the Act) and is also, therefore, governed by Rule 174A of the Central Excise Rules.

2. The case of the petitioner as averred in the petition is that it is the sole proprietary concern and engaged in the activities of trading of processed fabrics. The petitioner sends grey fabrics to one Gita Fabrics Pvt. Ltd. (the processor) who are admittedly holding Central Excise Licence in Form L-4 bearing No.MMF/2/82/VIII for the purposes of processing the said grey fabrics. It is further averred by the petitioner that the said processor is duly discharging the liability under the Act and the action of respondent No.2 in raising the demand in relation to the same goods qua the petitioner is bad in law. According to the petitioner, the assessable value of the goods has to be taken at the figure arrived at after considering the cost of the fabrics, raw materials utilised by the processor and the profits of the processor; any other expenses, namely, post manufacturing expenses or profits of the petitioner trader cannot form the component of the assessable value for the purpose of levy of duty under the Act. It is further stated that the petitioner and the processor are independent entities and the transaction between the two cannot be treated as a transaction in hands of the petitioner for the purposes of fastening the liability under the Act.

In support of the propositions, Mr Gupta appearing on behalf of the petitioner has placed reliance on the Apex Court decision in case of Ujagar Prints Etc. Etc. vs. Union of India & Ors., 1988 (38) ELT 535 and 1989 (39) ELT 493 as well as various other decisions of this Court and the Apex Court following the aforesaid decisions in case of Ujagar Prints.

3. Mr Asim Pandya for Ms DN Raval, learned Senior Standing Counsel appearing on behalf of the respondents contended that the case of the petitioner was governed by Rule 174A and Notification No.305/77 CE dated 5.11.1977. That the petitioner had failed to file the necessary declaration as required under the said notification and hence the impugned order was passed after hearing the petitioner. It was further stated that the petitioner has failed to declare that the petitioner had charged more price from its customers than the value declared by

the processor on which the duty had been charged. In the circumstances, it was submitted that the petition deserves to be rejected.

4. It is apparent from the facts which have come on record that the business of the petitioner is of wholesale trading of fabrics as recorded by respondent No.2 both in the show cause notice as well as the impugned order. Therefore, in absence of any material on record it is not possible to accept the finding of respondent No.2 that the petitioner is a merchant manufacturer. Hence it is not possible to hold that there was any obligation on the petitioner to file declaration as contended; and in absence of any obligation no failure can be attributed.

5. The only question that would survive is whether the assessable value could take within its sweep post manufacturing expenses and profit of the trader. In light of the fact that the respondent-authorities have failed to bring on record any material to show that the processor was not an independent processor and there being no allegation to that effect in the show cause notice, it is not possible to accept the contention that the petitioner was required to include in the chargeable value profits of the petitioner or the post manufacturing expenses incurred by the petitioner while selling the goods to the customers of the petitioner. Once it is accepted on facts that the processor is an independent processor, the ratio of the decisions of the Apex Court in case of Ujagar Prints (supra) would apply on all fours and, therefore, it is not possible to hold that the profits of the trader who gets the fabric processed are to be included. It is necessary to include only the processor's expenses, costs and charges plus profit and it is an admitted position on the facts of the case that Gita Fabrics Pvt. Ltd., the processor, has included such components while declaring the chargeable value.

6. In the circumstances, the impugned order at Annexure "D" made by respondent on 15.2.1989 is bad in law and the same is quashed and set aside. The bank guarantee furnished at the time of admission of the petition shall be discharged.

7. Rule is made absolute. There shall be no order as to costs.

(M.S. SHAH, J.)

(D.A. MEHTA, J.)

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